IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

OP.No. 13849 of 2003(W)

PETITIONER:

A.RAVEENDRAN, PRESIDENT,AVASA SAMUDAYA ABHIVARDHINI CO-OPERATIVE SOCIETY LTD.NO.2805, THIRUMALA P.O., THIRUVANANTHAPURAM--695 006, RESIDING AT 'SAPHALYA', KANIRAMPARA P.0., THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR
SRI.R.V.SREEJITH

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES THIRUVANANTHAPURAM.

3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), THIRUVANANTHAPURAM.

4. THE SECRETARY, AVASA SAMUDAYA ABHIVARDHINI CO-OPERATIVE SOCIETY LTD. NO. 2805, THIRUMALA P.O., THIRUVAANTHAPURAM - 695 006.

5. THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LTD,THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGER.

R1 TO 3 BY SPL.GOVT.PLEADER SMT.A.G.ANEETHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON 12/03/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.23401/2003 IN O.P. NO.13849/2003

DISMISSED:

12.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE CERTIFICATE ISSUED BY R5 CERTIFYING THAT AN AMOUNT OF RS.29,056/- WAS REMITTED TO THE BANK ON 23.7.2002.

P2: TRUE COPY OF NOTICE DT.23.1.2003 OF R3 SENT TO THE PETITIONER.

P3: TRUE COPY OF COMPLAINT GIVEN BY SRI.V.BABU TO R3.

P4: TRUE COPY OF THE REPORT DT.16.1.2003 OF THE ASSISTANT REGISTRAR(GENERAL), TRIVANDRUM ADDRESSED TO R3.

P5: TRUE COPY OF EXPLANATION DT.11.2.2003 SUBMITTED BY PETITIONER TO EXT.P2 NOTICE.

P6: TRUE COPY OF THE EXPLANATION DT.NIL.2.2003 SUBMITTED BY PETITIOENR BEFORE R3.

P7: TRUE COPY OF THE LETTER DT.10.3.2003 SENT BY THE PETITIONER TO THE GENERAL MANAGER, TRIVANDRUM DISTRICT CO-OPERATIVE BANK.

P8: TRUE COPY OF THE REPRESENTATION SUBMITTED BY PETITIONER DT.10.3.2003 BEFORE THE GOVT.

P9: TRUE COPY OF THE ORDER DT.7.4.2003 OF R2.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.13849 of 2003

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Dated this the 12th day of March, 2007.

JUDGMENT

The petitioner is challenging Ext.P9 whereunder petitioner's election to the Managing Committee of Kerala State Scheduled Caste and Scheduled Tribe Co-operative Federation is declared invalid by virtue of the debt due from 4th respondent to 5th respondent. According to the second respondent, petitioner is the President of the 4th respondent-society which owes substantial amounts to 5th respondent-society. Counsel for the petitioner contended that Rule 44 (1)C(i) of the Co-operative Societies Rules does not apply to petitioner's case because petitioner is not in arrears due to any society either as a borrower or as a surety. The question to be considered is whether liability of one society to another disentitles the President of Member of the managing committee of the debtor-society to be a member of the managing committee of another society. In order to appreciate the contention, Rule 44(1)(c)(i) has to be referred and therefore, the said Rule is extracted hereunder:

> "Rule 44-Disqualification of membership of committee:- (1) No member of the society shall be eligible for being elected, or appointed as a member of the committee of the society under Section 28 if he:-
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> (a) is disqualified under Section 28; or
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> (b) is a near relative of a paid employee of the society; or

> (c)(i) is in default to the society or to any other society in respect of any loan or loans taken by him or loan in which he had stood surety, for such period, as is prescribed in the byelaws of the society concerned or in any case for a period exceeding three months or is a defaulter to the society or to any other society; or
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> ....."

From the above provision it is clear that disability to become President or member of the managing committee is to a person and in order to fall within the mischief of the Rule, he should be either a borrower or surety for the loan taken by another person. In this case petitioner is neither a borrower nor surety for any loan availed from 5th respondent-society. On the other hand, debt due to 5th respondent is from 4th respondent which is another society and petitioner happened to be only the President of the debtor-society. Since petitioner has no disability under the Rule by being President of the debtor-society, the impugned order Ext.P9 declaring petitioner's disability is untenable. Accordingly O.P. is allowed quashing Ext.P9 issued against the petitioner.

C.N.RAMACHANDRAN NAIR
Judge

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